

Message Text

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DRAFTED BY EA/IMS:ARDORNHEIM:CCH

APPROVED BY EA/IMS:EDWARD C. INGRAHAM

EA - MR. EDMOND

L/C - MR. HENDERSON

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R 290056Z JUL 75

FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA

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E.O. 11652: N/A

TAGS: CPBS, BEXM, EINV, ETRD, ID

SUBJECT: P.T. BAUD CLAIM

1. AS FOLLOW-UP TO SULLIVAN'S MAY 29 LETTER TO HABIB REQUESTING AN APPOINTMENT TO DISCUSS SEA OIL/BAUD CLAIM, DEPUTY ASSISTANT SECRETARY EDMOND MET JULY 17 WITH SULLIVAN AND SEA OIL REP IN INDONESIA, THOMAS ATKINSON. (COPY OF MAY 29 LETTER HAS BEEN POUCHED TO AMBASSADOR).

2. EDMOND TOLD SULLIVAN THAT DEPARTMENT WAS CONCERNED WITH BOTH AN EQUITABLE SOLUTION TO SEA OIL PROBLEMS AND PRESERVATION OF AMICABLE RELATIONS BETWEEN INDONESIA AND UNITED STATES. EDMOND WAS NOT PREJUDGING SEA OIL CLAIM AND NOT ADVISING COMPANY WHAT TO DO, BUT HE BELIEVED DEPARTMENT WOULD FIND IT DIFFICULT, ON BASIS OF PRESENT SEA OIL RECORD, TO SUPPORT APPLICATION TO SEA OIL'S CLAIM OF U.S. LAWS RELATING TO FOREIGN EXPROPRIATIONS OF PROPERTY. THERE WERE SPECIFIC PRECONDITIONS, EDMOND SAID, WHICH CLAIMANTS ARE REQUIRED TO MEET BEFORE DEPARTMENT COULD CON-

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SIDER TAKING MORE FORMAL ACTION IN THEIR BEHALF. AT

EDMOND'S REQUEST, ATTORNEY FROM LEGAL ADVISOR'S OFFICE BRIEFED SULLIVAN IN SOME DETAIL ON DEPARTMENT'S POLICY AND PRACTICE IN HANDLING EXPROPRIATION CLAIMS ADVANCED BY U.S. CITIZENS IN ACCORDANCE WITH ACCEPTED PRINCIPLES OF

INTERNATIONAL LAW. ATTORNEY STRESSED THAT CLAIMANT HAS TO SHOW THAT HE HAS EXHAUSTED HIS AVAILABLE REMEDIES AND HAS SUSTAINED A DENIAL JUSTICE AS THAT TERM IS UNDERSTOOD IN INTERNATIONAL LAW. ATTORNEY REITERATED THAT DEPARTMENT HAS NOT BEEN REQUESTED TO CONSIDER SEA OIL CLAIM IN THIS CONTEXT AND STATED CLAIM WOULD BE SO EXAMINED AT APPROPRIATE TIME.

3. SULLIVAN AND ATKINSON REPEATED MUCH THAT WAS ALREADY KNOWN ABOUT THEIR CASE. THEY ASSERTED THAT GOI HAD ACCEPTED VALIDITY OF SEA OIL CLAIM WHEN IT OFFERED PREVIOUSLY TO RETURN ESTATES OR OTHER LANDS IN EXCHANGE. BY RAISING QUESTIONS ABOUT LEGALITY OF SEA OIL CLAIM FOR FIRST TIME, SULLIVAN SAID, WARDHANA'S JANUARY 28 LETTER REPRESENTED A FRUSTRATING AND UNACCEPTABLE CHANGE IN GOI POSITION. THIS HAD FORCED SEA OIL TO ADOPT HARD LINE OF TAKING ITS CASE TO CONGRESS. (SULLIVAN SAID DEADLINE FOR GOI REPLY THAT HE HAD SPECIFIED IN HIS APRIL 24 LETTER WAS SET AT SIXTY DAYS TO ENABLE HIM TO HAVE THAT REPLY BEFORE SENATOR INOUE CLOSED HIS CUB SUBCOMMITTEE HEARINGS).

4. SULLIVAN REPEATED HIS EARLIER ARGUMENT TO INOUE (STATE 156097 PARA 8) THAT INDONESIAN COURTS COULD NOT BE EXPECTED TO PASS ON CONSTITUTIONALITY OF ACTS BY GOI OFFICIALS AND LEGISLATIVE BODIES. ATKINSON ADDED THAT EVEN IF THEIR CASE WERE PUT INTO INDONESIAN COURTS AND A FAVORABLE JUDGMENT RECEIVED, SEA OIL WOULD BE ENTITLED UNDER INDONESIAN LAW NOT TO MONETARY COMPENSATION BUT ONLY TO 30-YEAR LEASEHOLD (WHICH BY IMPLICATION WAS UNACCEPTABLE TO SEA OIL). SULLIVAN ASSERTED GOI HAD INDICATED TO HIM IN APRIL LAST YEAR THAT ONLY WAY TO NEGOTIATE CLAIM WAS BY TREATING WITH SPECIAL TEAM ESTABLISHED BY MINISTRY OF AGRICULTURE. WHEN ASKED, SULLIVAN AND ATKINSON ACKNOWLEDGED THAT SEA OIL HAD NEVER ENGAGED OR SOUGHT LIMITED OFFICIAL USE

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ADVICE OF INDONESIAN COUNSEL, NOR DID SEA OIL POSSESS ANY DOCUMENTARY EVIDENCE SUPPORTING ITS ASSERTION ABOUT GOI REQUIREMENT OF DEALING SOLELY WITH MINISTRY OF AGRICULTURE NEGOTIATING TEAM.

5. IN REJECTING ARBITRATION ROUTE AGAIN, SULLIVAN ALLEGED THAT ANY FAVORABLE AWARD WOULD NOT BE ENFORCEABLE AGAINST GOI. EDMOND INDICATED THAT ANY REFUSAL BY

GOI TO HONOR ARBITRATION AWARD WOULD CERTAINLY BE MUCH STRONGER GROUNDS FOR USG PRESSURE ON GOI TO PAY SUCH HYPOTHETICAL AWARD.

6. SULLIVAN STATED SEA OIL WAS STILL ADOPTING A "REASONABLY FLEXIBLE" STANCE. HE SAID HE HAD MET WITH AMBASSADOR RUSMIN ON JULY 15 AND HAD STRESSED THAT SEA OIL SIMPLY DESIRED SOME FIRM INDICATION OF GOI WILLINGNESS TO NEGOTIATE "SERIOUSLY" THROUGH FULLY EMPOWERED NEGOTIATORS E.G. "A REAL GIVE AND TAKE NEGOTIATION".

7. WHEN ASKED BY SULLIVAN WHAT HE THOUGHT SHOULD BE DONE NOW, EDMOND REPLIED THAT THIS WAS UP TO SEA OIL, BUT HE WOULD THINK BEST THING TO DO WOULD BE AWAIT GOI REPLY TO SULLIVAN APRIL 24 LETTER. INGERSOLL

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